

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PHILLIP PESANO,

PLAINTIFF,

v.

UBER TECHNOLOGIES, INC. AND ANDREW
FARKOSH,

DEFENDANT.

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2:21-CV-1580

Jury Trial Demanded

NOTICE OF REMOVAL

TO THE HONORABLE CHIEF JUSTICE AND JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA.

Uber Technologies, Inc. (hereafter “Removing Defendant”), defendant in the matter of *Phillip Pesano v. Uber Technologies, Inc. and Andrew Farkosh*, hereby files this Notice of Removal for the removal of this action from the Allegheny County Court of Common Pleas to the United States District Court for the Western District of Pennsylvania, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. There is complete diversity, the amount in controversy exceeds seventy-five thousand dollars, exclusive of interest and costs and this notice has been timely filed. In support thereof, Uber Technologies, Inc. avers as follows:

1. Plaintiff commenced the above-captioned action by the filing of a Complaint in the Court of Common Pleas of Allegheny County on November 2, 2021. A copy of plaintiff’s Complaint is attached as Exhibit A.
2. Removing Defendant received the Complaint on November 3, 2021.
3. As averred in the Complaint, plaintiff Phillip Pesano, is a citizen of the State of Pennsylvania. See Exhibit A.

4. Defendant, Uber Technologies, Inc., is neither incorporated nor maintains its principal place of business in the State of Maryland or the Commonwealth of Pennsylvania.

5. Uber Technologies, Inc. is a corporation organized and existing under the laws of the State of Delaware, with its principal place of business in California.

6. As Averred in the Complaint, defendant Andrew Farkosh, is a citizen of the Commonwealth of Pennsylvania and resides at 123 Shara Drive, West Mifflin, Pennsylvania 15122.

7. At the time of this filing an Affidavit of Service has not been filed reflecting that defendant Farkosh has been served with the Complaint.

8. As such, at the time of the filing of plaintiff's Complaint and at the time of this removal, there is diversity of citizenship amongst the parties pursuant to 28 U.S.C. § 1332(a)(1).

9. This Court has jurisdiction of the above-captioned matter pursuant to 28 U.S.C. §1332, and this action may therefore be removed to this Court pursuant to 28 U.S.C. § 1441(b) and is in conformity with 28 U.S.C. § 1441(b)(2) as defendant Farkosh has not been served with the Complaint.

10. In his Complaint, plaintiff alleges that on December 24, 2019 that Defendant Farkosh pulled out a gun and shot plaintiff in the head causing him to sustain severe and permanent injuries. See Exhibit A, ¶ 25.

11. It is claimed that Uber Technologies should be held liable because Defendant Farkosh was its employee, agent and/or servant and Defendant Farkosh was acting within the course and scope of her employment, agency and/or service. Uber Technologies states that Farkosh is not, and was not at any time relevant to this litigation, its agent, workman, servant or employee.

12. Plaintiff alleges as a result of this incident, he suffered, *inter alia*, “post-traumatic moderately severe to severe sensorineural loss in his right ear resulting in immediate onset hearing loss; continued hearing loss of his right ear despite treatment; permanent loss of hearing in his right ear; acoustic trauma to the inner ear; mechanical trauma to the middle ear structures; [and] asymmetric hearing loss associated with acoustic trauma from a gun shot at close range[.]” See Exhibit A, ¶ 28.

13. Plaintiff also alleges that as a result of the accident, he “has suffered and will continue to suffer great pain, suffering, inconvenience, embarrassment, mental anguish and loss of enjoyment of life[.]” See Exhibit A, ¶ 29.

14. He further alleges he “has endured and will continue to endure decreased ability to engage in activities of daily living; and he has suffered a loss of earnings and will suffer a future loss of earnings.” See Exhibit A, ¶ 29.

15. Based on plaintiff’s claims, the amount in controversy in this matter exceeds Seventy-Five Thousand Dollars (\$75,000.00), and therefore satisfies the threshold for federal diversity jurisdiction. 28 U.S.C. § 1332(a) and § 1441(a).

16. Written notice of the filing of this Notice will be served on the adverse party as required by 28 U.S.C. §1446(d).

17. A copy of this Notice will be filed with the Prothonotary of the Court of Common Pleas of Allegheny County, Pennsylvania, as provided by 28 U.S.C. §1446(d).

18. Pursuant to 28 U.S.C. §1446(a), all process, pleadings and orders are attached as Exhibit A (Plaintiff’s Complaint).

WHEREFORE, Uber Technologies, Inc. prays that it may effect the removal of this action from the Court of Common Pleas of Allegheny County, Pennsylvania to the United States District Court for the Western District of Pennsylvania.

**WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP**

By: s/ John T. Donovan
John T. Donovan, Esquire
Caroline S. Vahey, Esquire
Attorneys for Defendant,
Uber Technologies, Inc.

Dated: November 3, 2021

CERTIFICATE OF SERVICE

I, John T. Donovan, Esquire, do hereby certify that a true and correct copy of Uber Technologies Inc.'s Notice of Removal was filed and served via First Class U.S. mail, postage pre-paid this November 3, 2021 on all parties.

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Andrew Farkosh
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**WILSON ELSEER MOSKOWITZ
EDELMAN & DICKER LLP**

By: s/ John T. Donovan
John T. Donovan, Esquire
Caroline S. Vahey, Esquire
Attorneys for Defendant,
Uber Technologies, Inc.

Dated: November 3, 2021